

Final Statement of Reasons for
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*

Update of Information in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for, and the anticipated benefits from, the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, are the same as provided in the initial statement of reasons.

The State Board of Equalization (Board) did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the amendments to Regulation 1685.5 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

The adoption of the proposed amendments to Regulation 1685.5 was not mandated by federal statutes or regulations and there is no federal regulation that is identical to Regulation 1685.5.

No Mandate on Local Agencies or School Districts

The Board has determined that the proposed amendments to Regulation 1685.5 do not impose a mandate on local agencies or school districts.

Public Comment

On January 28, 2012, Donna LeCroy emailed the Board her comment that the proposed amendments to Regulation 1685.5 are unconstitutional because they would require every taxpayer to pay an estimated amount of use tax to the Board regardless of whether the taxpayers actually owed use tax. The Board disagreed with this comment and Board staff noted on the record at the March 20, 2012, public hearing that there is nothing in the proposed amendments that would require a taxpayer to pay a use tax that the taxpayer does not owe. In fact, the amendments adding subdivision (a)(2)(A) to Regulation 1685.5 expressly provide that:

Consumers may elect to use the use tax tables included in the instructions to their FTB returns to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

Therefore, at the conclusion of the March 20, 2012, public hearing, the Board voted to adopt the proposed amendments to Regulation 1685.5 without any changes. No other interested parties submitted written comments regarding the proposed amendments to Regulation 1685.5 and no interested parties asked to speak at the public hearing.

Determinations Regarding Alternatives

By its motion, the Board determined that no alternative to the proposed amendments to Regulation 1685.5 would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Furthermore, the Board did not reject any alternatives to the proposed amendments to Regulation 1685.5 or any alternatives that would lessen the adverse economic impact on small businesses. No alternative amendments were presented to the Board for consideration.

The proposed amendments are anticipated to provide the following benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

No Significant Adverse Economic Impact on Business

The adoption of the proposed amendments to Regulation 1685.5 will update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years in order to respond to interested parties comments and generally improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. And, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.